IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A A No. 733 of 2000

Date of decision : November 21, 2007

State of H.P. **...Appellant.**

Versus

Raj Karan Singh and others **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. D.S. Nainta, Deputy Advocate General.

For the Respondents : Mr. Dinesh Kumar Sharma, Advocate.

Surjit Singh, Judge(Oral)

Respondents were sent up for trial for offences punishable under Sections 147, 323, 325 and 506 read with Section 149 IPC, for allegedly forming unlawful assembly with a common object of dispossessing PW-1 Nek Mehammed from a piece of land in his possession and in prosecution of that object arming themselves with deadly weapons and then trespassing into the field of Nek Mohammed and giving him beatings with hockey-stick, *dandas,* fists and kicks.

2. Trial Court charged the respondents with the aforesaid offences and on their pleading not guilty tried them. At the end of the trial, the respondents were acquitted. State has appealed against the judgment of acquittal.

3. I have heard the learned Deputy Advocate General and gone through the record.

Whether reporters of the local papers may be allowed to see the judgment?

4. From the perusal of the record, it is clear that PW-1 Nek Mohammed reported to the police that he was beaten up with a hockey-stick, which respondent Raj Karan was carrying, while other respondents fisticuffed and kicked him and he was rescued by PW-2 Ramzan and PW-8 Sohan Lal. However, while in the witness-box, PW-1 Nek Mohammed stated that he was hit with hockey-stick and *dandas*. There is no mention of any *dandas* in the earliest version, which Nek Mohammed gave to the police vide report Ex. PW-1/A. PW-2 Ramzan did not say that he rescued PW-1 Nek Mohammed, even though he stated that he saw the occurrence from a distance of about 150 feet. According to PW-1 Nek Mohammed, he was initially beaten up in the field, from which he was sought to be ousted, and thereafter at another place at a distance of 150 yards from his field, because when being beaten up in the field, he ran away to save himself and the respondents followed him and overpowered him at the second place. PW-2 Ramzan says that he saw the respondents beating PW-1 Nek Mohammed in the field itself and it was there that PW-8 Sohan Lal reached and rescued him. The statement is apparently incorrect, because even though Nek Mohammed has not categorically stated so, it does appear from an overall reading of his testimony that he was rescued at the second site, because after rescue there was no question of his being beaten up again and also because it is stated by Nek Mohammed that on being rescued he was taken straightway to the Police Post at Subathu. Furthermore, PW-2 Ramzan does not name all the respondents. Even PW-1 Nek Mohammed has not named all the respondents, but only Raj Karan. PW-8 Sohan Lal does not say that he saw any of the respondents giving beating to Nek Mohammed, even though he says that he

rescued him. He does not say from whom he rescued him. He says that the respondents left behind the hockey-stick Ex. P-1, which he produced to the police 6-7 days after the occurrence.

5. It has come in the evidence that while PW-1 Nek Mohammed lodged the report at Police Post, Subathu, at 7.15 p.m., respondent Raj Karan lodged a report against PW-1 Nek Mohammed and some of his family members at Police Station, Dharampur (Police Post, Subathu, is under the control of Police Station, Dharampur) at 8.10 p.m. or say within 40 minutes of the lodging of the report by PW-1 Nek Mohammed in Police Post, Subathu. In the said report respondent Raj Karan got recorded that PW-1 Nek Mohammed accompanied by a number of his family members and armed with hockey-stick and *dandas* assaulted him when he was working in his field and caused him injuries. The fact that hockey-stick was produced by prosecution witness, namely PW-8 Sohan Lal, lends credence to the version given by respondent Raj Karan at Police Station, Dharampur, because in the said version he disclosed that he was beaten up with hockey-sticks and *dandas*. Had the hockey-stick been with respondent Raj Karan, as alleged by PW-1 Nek Mohammed, why should have he left the same on the spot. It is nobody's case that the hockey-stick had been snatched from respondent Raj Karan by PW-1 Nek Mohammed or the two alleged rescuers, PW-2 Ramzan and PW-8 Sohan Lal.

6. In view of the abovestated position, no fault can be found with the judgment of acquittal recorded by the trial Magistrate. Hence, the appeal is dismissed.

November 21, 2007(sd) **(Surjit Singh), J**